

1 Law Offices of Travis Gagnier, Inc., P.S.
33507 Ninth Avenue South, Bldg. F
2 P.O. Box 3949
Federal Way, WA 98063-3949
3 253-941-0234; gagnierecf@bestbk.com

Honorable Brian D. Lynch

4
5
6 IN THE UNITED STATES BANKRUPTCY COURT
7 FOR THE WESTERN DISTRICT OF WASHINGTON

8 **LEMCO, Ronald & Valarie Sue,**

Number 23-41636

9 Debtors.

Adversary Number: 24-

10 **LEMCO, Ronald & Valarie Sue,**

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF STUDENT
LOANS**

11
12 Plaintiffs,

13 v.

14 **UNITED STATES OF AMERICA
15 ACTING THROUGH THE U.S.
DEPARTMENT OF EDUCATION,**

16 Defendant.

17 Ronald Lemco and Valarie Sue Lemco, the Debtors (hereinafter "Plaintiffs") allege as
18 follows:

19 **A. Jurisdiction**

20
21 1. That this Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 & 28
22 U.S.C. 157(b)(2)(G). This matter relates to a case under Title 11 of the United States Code.
23 This proceeding is defined as a "core proceeding" as that is defined in the Code. Plaintiffs
24 consent to entry of final orders or judgment by the bankruptcy court in this adversary
25 proceeding.

26 COMPLAINT - 1

27 Law Offices of Travis Gagnier, Inc., P.S
33507 Ninth Avenue South, Bldg. F
P.O. Box 3949
Federal Way, WA 98063-3949

28 Phone: (253) 941-0234; gagnierecf@bestbk.com

1 **B. History**

2 2. Plaintiffs filed their Chapter 13 Bankruptcy Proceeding in the United States
3 bankruptcy court for the Western District of Washington on September 28, 2023 under case
4 number 23-41636.

5 3. That this Court upon the filing of the Petition duly entered an Order for Relief under
6 the provisions of the Bankruptcy Code.

7 4. That Michael G. Malaier was appointed the chapter 13 Trustee in the Lemco Chapter
8 13 case and serves in that capacity in this case.

9 **C. Facts and Allegations**

10 5. That pursuant to 11 USC § 523(a)(8) educational benefit overpayment or loan made,
11 insured, or guaranteed by a governmental unit, or made under any program funded in whole
12 or in part by a governmental unit or nonprofit institution; or an obligation to repay funds
13 received as an educational benefit, scholarship, or stipend; or any other educational loan that
14 is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of
15 1986, incurred by a debtor who is an individual are nondischargeable unless excepting the
16 debt from discharge would impose an undue hardship on the debtor or the debtor's
17 dependents. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278 (2010) ("the
18 bankruptcy court must make an independent determination of undue hardship . . . even if the
19 creditor fails to object or appear in the adversary proceeding."). This inquiry is undertaken
20 through a formal adversary proceeding in the bankruptcy court. *United Student Aid Funds*,
21 559 U.S. at 263-64; Fed. R. Bankr. P. 7001(6).

22 6. That on the 17th day of October 2023, Defendant, United States of America acting
23 through the U.S. Department of Education, filed a proof of claim which as been docket as
24 claim no. 3 in the amount of \$28,511.46. Defendant, United States of America acting through
25 ///

1 the U.S. Department of Education, has designated this proof of claim as a claim arising out of
2 student loans owed by Plaintiff, Valarie Sue Lemco.

3 7. That Plaintiffs believe and allege that the repayment of student loans to Defendant
4 would impose an undue hardship on Plaintiffs.

5 8. That on or about the 17th day of November 2022 The Department Justice issued
6 Guidance for Department of Justice Attorneys in regards to Student Loan Bankruptcy
7 Litigation which Plaintiff is requesting the Defendant utilize in evaluating whether Plaintiff's
8 student loans should be discharged. Plaintiff acknowledges that the Guidance Memorandum
9 is an internal Department of Justice policy directed at Department components and
10 employees and it is not intended to and does not create any rights, substantive or procedural,
11 enforceable at law by any party in any matter.

12 9. Plaintiffs request that upon receipt of this Complaint that Defendant will provide
13 Plaintiffs' attorney with the record of Plaintiffs' account history, loan details, and, where
14 available, educational history.

15 10. Upon receipt of the information from Defendant as to Plaintiffs' student loans,
16 Plaintiffs will prepare and file in this adversary proceeding an Attestation (as prescribed by
17 the Department of Justice) in order to assist Defendant in stipulating to facts demonstrating
18 that the debts would impose an undue hardship on the Plaintiffs and recommend to the Court
19 that Plaintiffs' students loan be discharged if three conditions are satisfied: (1) Plaintiffs
20 presently lacks an ability to repay the loan; (2) Plaintiffs' inability to pay the loan is likely to
21 persist in the future; and (3) Plaintiffs have acted in good faith in the past in attempting to
22 repay the loan.

23 11. Upon receipt of Plaintiffs' Attestation Plaintiffs request that Defendant stipulate to facts
24 demonstrating that a debt would impose an undue hardship and recommend to this Court that
25 Plaintiffs' student loan be discharged.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

COMPLAINT - 4

Law Offices of Travis Gagnier, Inc., P.S.
33507 Ninth Avenue South, Bldg. F
P.O. Box 3949
Federal Way, WA 98063-3949